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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jhon Nigel Brisken,

10 Plaintiff,

11 v.

12 Unknown Allen,

13 Defendant.
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No. CV-18-00241-PHX-JJT (ESW)

ORDER

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16 On January 22, 2018, Plaintiff Jhon Nigel Brisken, who is confined in CoreCivic's
17 Saguaro Correctional Center in Eloy, Arizona, filed a pro se civil rights Complaint pursuant
18 to 42 U.S.C. § 1983 (Doc. 1), alleging a First Amendment retaliation claim. On April 16,
19 2018, the Court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A(a) and
20 ordered Defendant Allen to answer (Doc. 8 at 12). The Court further ordered Plaintiff to
21 obtain a waiver of service or effectuate service upon Defendant Allen "within 90 days of
22 the filing of the Complaint or within 60 days of the filing of this Order, whichever is later,"
23 or the action may be dismissed (*Id.*). On July 11, 2018, service was returned unexecuted
24 for lack of sufficient information (Doc. 10). The Court provided Plaintiff with an
25 additional service packet on December 21, 2018 and extended the time to effectuate service
26 of process for an additional sixty days from the filing of the Order (Doc. 26 at 4). Though
27 Plaintiff timely returned the service packet to the Clerk of Court, the United States Marshal
28 Service ("USMS") did not receive the forwarded packet. The Court sent Plaintiff a third

1 service packet on June 14, 2019 (Doc. 30). Plaintiff returned the service packet to the Clerk
2 of Court on August 26, 2019. Service was returned unexecuted on October 18, 2019 with
3 the notation: "Per Warden Secretary, subject Allen no longer works for facility." (Doc. 37
4 at 1).

5 Under Fed. R. Civ. P. 4(m), "[i]f a defendant is not served within 90 days after the
6 complaint is filed, the court – on motion or on its own after notice to the plaintiff – must
7 dismiss the action without prejudice against that defendant or order that service be made
8 within a specified time." Defendant Allen has not been served, and the time for doing so
9 has passed. Where a prisoner fails to provide USMS with accurate and sufficient
10 information to effect service of the summons and complaint, a court's sua sponte dismissal
11 of the unserved defendant is appropriate. *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir.
12 1994) (quoting *Sellers v. United States*, 902 F. 2d 598, 603 (7th Cir. 1990)), *abrogated on*
13 *other grounds by Sandin v. Connor*, 515 U.S. 472 (1995).

14 **IT IS ORDERED** that Plaintiff either file an affidavit of service or show cause no
15 later than **December 13, 2019** why his Complaint (Doc. 1) should not be dismissed without
16 prejudice for failure to timely serve Defendant Allen pursuant to Fed. R. Civ. P. 4(m).

17 Dated this 12th day of November, 2019.

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21 Honorable Eileen S. Willett
22 United States Magistrate Judge
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